People v. Ray: The Fourth Amendment and the Community Caretaking Exception

By JENNIFER FINK*

THROUGHOUT THE PAST several decades there has been extensive litigation surrounding the Fourth Amendment to the United States Constitution and the protection it affords the American public. The Fourth Amendment states:

> [T]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.[1]

The primary purpose of this Amendment is to "[p]rotect[ ] citizens from unwarranted governmental intrusion."[2] In order to protect citizens against unreasonable searches and seizures and limit the potentially abusive power of the police, the Fourth Amendment requires police to have a search warrant[3] based on probable cause[4] in order to perform a lawful search and seizure.[5]

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* Class of 2001. The author would like to dedicate this Note to her family for their love and support.

1. U.S. CONST. amend. IV.

2. People v. Ray, 981 P.2d 928, 941 (Cal. 1999) (Mosk, J., dissenting).

3. A search warrant is defined as "[a]n order in writing, issued by a justice or other magistrate, in the name of the state, directed to a sheriff, constable, or other officer, authorizing him to search for and seize any property that constitutes evidence of the commission of a crime, contraband . . . or things otherwise criminally possessed." BLACK'S LAW DICTIONARY 1350 (6th ed. 1991).

4. Probable cause is defined as:

> The evidentiary criterion necessary to sustain . . . the issuance of an arrest or search warrant. "Probable cause" . . . exists where facts and circumstances within officers' knowledge . . . are sufficient in themselves to warrant a person of reasonable caution in the belief that an offense has been or is being committed; it is not necessary that the officer possess knowledge of facts sufficient to establish guilt, but more than mere suspicion is required.

BLACK'S LAW DICTIONARY 1201 (6th ed. 1991).

5. *See Ray*, 981 P.2d at 931.

Courts have been confronted with a multitude of circumstances under which defendants have claimed violations of their Fourth Amendment rights. Courts have responded by interpreting the Fourth Amendment, and the degree of protection it affords, in light of the particular facts and circumstances presented.[6] Over time, courts have carved out a careful set of exceptions to the warrant and probable cause requirements of the Fourth Amendment.[7] The situations where police are not required to secure a warrant include so-called "exigent circumstances,"[8] searches incident to arrest,[9] seizures of items in plain view,[10] and consent searches.[11]

The need to protect the sanctity of an individual's home is a common theme running through Fourth Amendment jurisprudence.[12] The United States Supreme Court has held that "'the physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.'"[13] Absent exceptional circumstances, courts have steadfastly adhered to the warrant and probable cause requirements in deciding the constitutionality of searches of private residences.[14] "Entry into a residence by a police officer is *'per se'* unreasonable, unless the police can show that it falls within one of a

6. *See* John F. Decker, *Emergency Circumstances, Police Responses, and Fourth Amendment Restrictions,* 89 J. CRIM. L. & CRIMINOLOGY 433, 436–40 (1999).

7. *See infra* notes 8–11 and accompanying text.

8. *See* People v. Duncan, 720 P.2d 2, 11 (Cal. 1986)) (defining exigent circumstances as "an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property"); *see also* Schmerber v. California, 384 U.S. 757, 770–71 (1966) (holding that a warrant is not required in a situation where the procurement of a warrant would result in the destruction of evidence as long as the police did not create the need for an immediate response).

9. *See, e.g.*, New York v. Belton, 453 U.S. 454, 460 (1981) (holding that when a law enforcement official effects a valid arrest, he or she may perform a search of the individual arrested, including the area immediately surrounding the arrestee).

10. *See, e.g.*, Horton v. California, 496 U.S. 128, 142 (1990) (holding that when a law enforcement official is at a particular location lawfully and he or she views contraband or other evidence of criminal activity, the officer may seize the evidence without first obtaining a warrant).

11. *See, e.g.*, Schneckloth v. Bustamonte, 412 U.S. 218, 227–28, 248 (1973) (holding that if a law enforcement official obtains voluntary consent to search a premises from an individual with apparent authority to give consent, the officer may search without first obtaining a warrant).

12. *See, e.g.*, Payton v. New York, 445 U.S. 573, 585 (1980) (citing Boyd v. United States, 116 U.S. 616, 630 (1886)).

13. *Id.* (quoting United States v. United States District Court, 407 U.S. 297, 313 (1972)).

14. *See id.*

carefully defined set of exceptions."[15] Consequently, when a case involving the search and seizure of an individual's home comes before a court, the sitting judges must be particularly cautious to ensure there was either a valid warrant or an applicable exception to the warrant requirement.

The community caretaking exception is the most recent exception to the Fourth Amendment warrant requirement.[16] This exception allows police to enter an individual's home without a warrant when they are concerned for the welfare of the occupants and the property within.[17] The essence of this exception lies in the fact that certain activities of law enforcement officials are "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute."[18] It encompasses situations where police officers are "helping stranded motorists, returning lost children to anxious parents, [and] assisting and protecting citizens in need."[19] When performing such caretaking functions, law enforcement engages in numerous activities that are beneficial to society at large. The primary concern of the police in such instances is the well-being of particular individuals as opposed to crime-solving.[20] Nevertheless, the community caretaking exception threatens the protections traditionally afforded by the Fourth Amendment.

State courts have begun to recognize the community caretaking exception.[21] Recently, the exception came before the California Su-

15. People v. Ray, 981 P.2d 928, 942 (Cal. 1999) (Mosk, J., dissenting) (quoting Coolidge v. New Hampshire, 403 U.S. 443, 474–75 (1971)).

16. *See id.* at 931 (citing Cady v. Dombrowski, 413 U.S. 433, 444 (1973)). The community caretaking exception was first recognized in *Cady*, where the Court held that when officers arrest an individual in his car, aware of the fact that the arrestee is a police officer who most likely carries a gun, the police may search the trunk of the vehicle in order to recover the weapon without first obtaining a warrant. *See Cady*, 413 U.S. at 447–48. The Court reasoned that public safety required police officers to perform such functions. *See id.* *See also* discussion *infra* Part I.A.

17. *See* People v. Davis, 497 N.W.2d 910, 920 (Mich. 1993).

18. *Cady*, 413 U.S. at 441.

19. *Ray*, 981 P.2d at 931.

20. *See Davis*, 497 N.W.2d at 920.

21. *See, e.g.*, City of Troy v. Ohlinger, 475 N.W.2d 54, 55 (Mich. 1991) (holding that when officers are pursuing an individual suspected of drunk driving, under the community caretaking exception the officers may go to his home and enter the dwelling after viewing the individual bleeding on his bed); Duck v. State, 518 So. 2d 857, 859–60 (Ala. Crim. App. 1987) (holding that when an individual files a missing vehicle complaint and police go to his trailer in order to get his signature to withdraw it, and upon entering the trailer view marijuana in plain view, the officers may seize the evidence without a warrant based on community caretaking functions of police officers).

preme Court, in *People v. Ray*,[22] which validated the community caretaking exception, allowing the police to seize evidence from a home after making an initial warrantless entry.[23]

Part I of this Note discusses the evolution of the community caretaking exception. Part II discusses the majority, concurring, and dissenting opinions of the California Supreme Court in *Ray*. Finally, Part III analyzes the *Ray* decision and the problems likely to arise with the adoption of the community caretaking exception in California. This Note concludes that the community caretaking exception should be limited to those situations involving automobiles, leaving the sanctity of the home intact.

I. Background: The History Behind the Community Caretaking Exception

A. The Seminal Case of *Cady v. Dombrowski*

The United States Supreme Court first authorized the community caretaking exception in the case of *Cady v. Dombrowski*.[24] In *Cady*, the police received a call notifying them that the defendant was involved in a car accident.[25] The two officers picked up the defendant at a local tavern and drove him to the scene of the accident, where his car was located.[26] The defendant informed the officers that he was a Chicago police officer.[27] Knowing that officers were required to carry their guns at all times, the police officers searched the defendant's vehicle in an effort to locate the gun.[28] While performing the search, they discovered and seized evidence linking the defendant to a homicide.[29] At the defendant's trial, the Wisconsin state court admitted this evidence and the defendant was convicted of first-degree murder, which conviction was upheld on appeal.[30] The Wisconsin Supreme Court rejected the defendant's claim that the evidence used against him at trial was unconstitutionally seized.[31] In the defendant's subsequent habeas corpus action, the Seventh Circuit Court of Appeals re-

22. 981 P.2d 928 (Cal. 1999).
23. *See id.* at 939.
24. 413 U.S. 433 (1973).
25. *See id.* at 435–36.
26. *See id.* at 436.
27. *See id.*
28. *See id.*
29. *See id.* at 437.
30. *See id.* at 434.
31. *See* State v. Dombrowski, 171 N.W.2d 349 (Wis. 1969).

versed the district court and held that certain evidence at the trial was seized in violation of the Fourth Amendment.[32]

Reversing the Seventh Circuit, the United States Supreme Court held the evidence was admissible, creating the new community caretaking exception.[33] The court explained that community caretaking functions of police officers include investigating accidents and recovering missing guns that could be dangerous to the public.[34] The Court was careful to distinguish, however, between searching automobiles under this new exception and searching homes without first obtaining a warrant.[35] The Court explained: "The constitutional difference between searches of . . . houses . . . from [searches of] vehicles stems from the ambulatory character of the latter and from the fact [that there is] extensive, and often noncriminal contact with automobiles."[36] This distinction recognized a significantly increased level of constitutional protection of homes over automobiles and enabled the Court to rule that the warrantless search involved in *Cady* was justified by the community caretaking exception.[37] Therefore, despite the California Supreme Court's expansion of the community caretaking exception to justify the warrantless searches of homes, Fourth Amendment jurisprudence dictates an increased level of protection for homes and necessarily requires a more limited application of the community caretaking exception.

B. *Payton v. New York*: A Firm Line Against Warrantless Intrusions into the Home

Courts have acknowledged the sanctity of the home as warranting the highest level of protection: "At the very core of [the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion."[38] In *Payton v. New York*,[39] the United States Supreme Court decided a case in which the defendant challenged a New York statute[40] permitting

32. *See* Dombrowski v. Cady, 471 F.2d 280, 286 (7th Cir. 1972).
33. *See Cady*, 413 U.S. at 447–48.
34. *See id.*
35. *See id.* at 442.
36. *Id.*
37. *See id.* at 447–48.
38. Payton v. New York, 445 U.S. 573, 589–90 (1980).
39. 445 U.S. 573 (1980).
40. *See* N.Y. CRIM. PROC. LAW § 140.15(4) (McKinney 1992). With respect to an arrest without a warrant, section 140.15(4) provides: "[A] police officer may enter premises in which he reasonably believes such person to be present, under the same circumstances and

law enforcement officials to enter a private residence without a warrant in order to make a routine felony arrest.[41] After analyzing the distinction between public and private places, and determining that private places must be given a much greater degree of protection,[42] the Court concluded the statute was an unconstitutional violation of the Fourth Amendment.[43] The Court stated: "[T]he Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant."[44]

The *Payton* case exemplifies the Supreme Court's rejection of warrantless entries into the sanctity of one's home. The community caretaking exception adopted by the California Supreme Court in *Ray* threatens the right to be free from governmental intrusions into homes and is likely to have grave and far reaching results.

C. Interpretation of the Community Caretaking Exception By Courts After *Cady*

1. *United States v. Pichany*

In *United States v. Pichany*,[45] the Seventh Circuit was called upon to determine the validity of a warrantless search performed by police officers while investigating a burglary.[46] During the investigation of a neighboring warehouse, the officers entered the defendant's warehouse and discovered stolen goods.[47] The court refused to justify the officers' actions based on the community caretaking exception created in *Cady*, limiting its application to situations involving automobiles.[48]

The court stated that "the plain import from the language of the *Cady* decision is that the Supreme Court did not intend to create a broad exception to the Fourth Amendment warrant requirement to apply whenever the police are acting in an 'investigative,' rather than

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in the same manner as would be authorized . . . if he were attempting to make such an arrest pursuant to a warrant of arrest." *Id.*

41. *See Payton*, 445 U.S. at 574.
42. *See id.* at 587–89.
43. *See id.* at 603.
44. *Id.* at 590.
45. 687 F.2d 204 (7th Cir. 1982).
46. *See id.* at 205.
47. *See id.* at 205–06.
48. *See id.* at 209.

a 'criminal' function."[49] The court, therefore, explicitly refused to extend the community caretaking exception beyond the context of automobiles and suppressed all of the evidence seized at the warehouse without a warrant and introduced against the defendant.[50] Moreover, the Seventh Circuit reasoned that "[t]he [Supreme] Court intended to confine the [*Cady*] holding to the automobile exception and to foreclose an expansive construction of the decision allowing warrantless searches of private homes or businesses."[51] The *Pichany* court refused to expand the community caretaking exception at the risk of jeopardizing the Fourth Amendment safeguard against warrantless searches.

2. *United States v. Erickson*

Like the Seventh Circuit, the Ninth Circuit, in *United States v. Erickson*,[52] also concluded that the Supreme Court in *Cady* intended to limit the community caretaking exception to searches of automobiles.[53] In *Erickson*, police officers went to the defendant's home to investigate a burglary.[54] An inspection of the perimeter showed the house to be secure.[55] Nevertheless, the police proceeded to pull back a plastic sheet covering a window of the home and found a number of marijuana plants.[56] The police obtained a search warrant based upon their discovery of the marijuana plants.[57]

The defendant moved to suppress all of the evidence obtained pursuant to the search warrant, arguing that the initial warrantless search, which uncovered the marijuana plants in his home, violated his Fourth Amendment rights.[58] The government argued that the initial search fell within the community caretaking exception to the warrant requirement, because the police were investigating a possible burglary.[59] The district court granted the defendant's suppression motion.[60]

49. *Id.* at 208–09 (quoting Cady v. Dombrowski, 413 U.S. 433, 453 (1973) (Brennan, J., dissenting)).
50. *See id.* at 209.
51. *Id.*
52. 991 F.2d 529 (9th Cir. 1993).
53. *See id.* at 532.
54. *See id.* at 530.
55. *See id.*
56. *See id.*
57. *See id.*
58. *See id.*
59. *See id.*
60. *See id.*

The Ninth Circuit affirmed the district court's decision, refusing to justify the search based on the community caretaking exception.[61] The court noted that *Cady* "clearly turned on the 'constitutional difference' between searching a house and searching an automobile."[62] The court explained that this difference required it to limit the application of the exception to cases involving automobiles.[63] Thus, the *Erickson* court followed *Cady* and previous Fourth Amendment jurisprudence by refusing to justify the warrantless search of a home based solely on the community caretaking exception.

II. The Case: *People v. Ray*

A. The Parties

In *People v. Ray*,[64] an anonymous caller reported that the doors of his neighbor's house had been open all day and that it appeared as if no one was home.[65] The police went to investigate and noticed the door was open approximately two feet.[66] The police stated there was "clothing, paper, strewn on the ground, on the sofa. It was just a real mess inside; [it] looked like someone had gone through the house."[67] Although the police did not see signs of a forced entry, the messy condition of the house increased their suspicion that the home might have been burglarized.[68] One of the officers on the scene stated that in his experience, "this circumstance correlated to a '95 percent' likelihood they had encountered a burglary or similar situation."[69]

The police knocked and announced their presence, but no one responded.[70] They did not obtain a warrant to search the premises.[71] Instead, they entered the home of the defendant based on their own presumptions that the home had been burglarized.[72] The officers conducted a "security check . . . to see if anyone inside might be injured, disabled, or unable to obtain help."[73] While inside the premises, they

61. *See id.*
62. *Id.* at 532 (quoting Cady v. Dombrowski, 413 U.S. 433, 442 (1973)).
63. *See id.*
64. 981 P.2d 928 (Cal. 1999).
65. *See id.* at 931.
66. *See id.*
67. *Id.*
68. *See id.*
69. *Id.*
70. *See id.* at 931–32.
71. *See id.*
72. *See id.* at 931.
73. *Id.* at 932.

did not find anyone, but did "observe a large quantity of suspected cocaine and money in plain view."[74] The police left the home in order to obtain a search warrant based on these observations.[75]

The defendant was later charged with possession of more than twenty-five pounds of cocaine,[76] possession of cocaine base for sale,[77] and manufacturing a controlled substance.[78]

B. Procedural Background

1. The Trial Court's Decision

At trial, the defendant moved to suppress the evidence seized, claiming the officers violated the Fourth Amendment when they entered his home without a warrant.[79] The prosecution argued the police acted within the exigent circumstances exception to the warrant requirement.[80] The trial judge agreed with the defendant and ruled that the police should have obtained a warrant before entering the defendant's home and rendered the evidence seized inadmissible.[81] The judge stated that while "we commend the officers for at least doing their community service to try and protect people and help people," there was not "sufficient information [that] would justify the officer to believe that an exigent circumstance was taking place at that point."[82] The trial judge went on to state:

> It's one of those situations, I think, where it's not uncommon where people leave their doors open. And we commend the of-

74. *Id.*

75. *See id.*

76. *See* CAL. HEALTH & SAFETY CODE § 11351 (West 1991). Section 11351 provides: "[E]very person who possesses for sale or purchases for purposes of sale . . . any controlled substance . . . which is a narcotic drug, shall be punished by imprisonment in the state prison for two, three, or four years." *Id. See also* CAL. HEALTH & SAFETY CODE § 11370.4(a)(3) (West 1991). Section 11370.4(a)(3) provides: "Any person convicted of a violation of, or of a conspiracy to violate, Section 11351 . . . [w]here the substance exceeds 25 pounds by weight, . . . shall receive an additional term of 10 years." *Id.*

77. *See* CAL. HEALTH & SAFETY CODE § 11351.5 (West 1991). Section 11351.5 provides: "Except as otherwise provided in this division, every person who possesses for sale or purchases for purposes of sale . . . any controlled substances [including cocaine base] . . . shall be punished by imprisonment in the state prison for two, three, or four years." *Id.*

78. *See* CAL. HEALTH & SAFETY CODE § 11379.6(a) (West 1991). Section 11379.6(a) provides: "Except as otherwise provided by law, every person who manufactures . . . either directly or indirectly by chemical extraction . . . any controlled substance . . . shall be punished by imprisonment . . . for three, five, or seven years and by a fine not exceeding fifty thousand dollars ($50,000)." *Id.*

79. *See Ray*, 981 P.2d at 932.

80. *See id.*

81. *See id.*

82. *Id.*

> ficers for at least doing their community service to try to protect people and help people. But there are going to be situations where in fact in doing that they are going to come inside and discover evidence of a crime. And it's going to turn out unfortunately it is not admissible. And I think this is one of those situations.[83]

Thus, while the trial judge lauded the officer's actions, he did not think that the exigent circumstances exception, nor any other available exception to the warrant requirement, could justify the officers' search in this instance. In so holding, the judge stated: "[I]f we are going to get into a situation where you are going to prosecute someone for a crime in this situation, I think they need[ ] to get a search warrant."[84]

2. The Appellate Court's Decision

The appellate court reversed the trial judge's decision, determining that the actions taken by the police *were* justified under the exigent circumstances exception because "the officers reasonably suspected that an exigency existed requiring their immediate warrantless entry."[85] The court balanced the defendant's privacy interests against the government's interest "in protecting the safety of individuals who may be the victims of crime or other unfortunate occurrences."[86] The court concluded that, based on the facts before it, the government's interest prevailed, and the officers were justified in making a warrantless entry into the defendant's home.[87]

However, the appellate court failed to set out a clear standard for law enforcement agents to apply when making such decisions. Instead, the court simply stated that the particular factual scenario at hand affirmed the existence of an "exigency."[88] The appellate court did not discuss the application of the community caretaking exception, instead basing its decision entirely on the exigent circumstances exception.[89] The defendant appealed to the California Supreme Court, which granted his petition for review.[90]

83. *Id.* (citations omitted).

84. *Id.*

85. People v. Ray, 75 Cal. Rptr. 2d 565, 572 (Ct. App. 1998).

86. *Id.*

87. *See id.*

88. *See id.*

89. *See* People v. Ray, 981 P.2d 928, 932 (Cal. 1999).

90. *See* People v. Ray, 963 P.2d 1005 (Cal. 1998).

C. The Case: Proceedings Before the California Supreme Court

1. The Parties' Contentions

In his petition for review to the California Supreme Court, Ray challenged the appellate court's application of the exigent circumstances exception, arguing that the Fourth Amendment prohibits an officer from performing a warrantless entry into a private residence if he or she lacks probable cause to believe that an exigency exists.[91] Because the lower courts focused solely on the exigent circumstances exception, the defendant's argument did not discuss the community caretaking exception.

The government argued that the appellate court's decision should be upheld, contending that the exigent circumstances exception justified the officers' warrantless entry into Ray's private residence.[92] The state did not extensively examine the community caretaking exception, as its brief asserted that the warrantless entry in this instance could instead be justified on the basis of exigent circumstances.[93] The Attorney General argued that the California Supreme Court should affirm the appellate court "on the basis of the 'emergency aid' exception, which he characterize[d] as a variant of exigent circumstances."[94]

2. The Court's Rationale

a. The Majority Opinion

As stated by the California Supreme Court, "[b]oth the trial court and the [c]ourt of [a]ppeal analyzed the facts and law under the exigent circumstances exception to the Fourth Amendment warrant requirement."[95] However, in a divided opinion, the California Supreme Court affirmed the appellate court's decision to allow the admission of the evidence, justifying the officers' actions on the basis of the community caretaking exception.[96] The California Supreme Court discussed the appellate court's reasoning, concluding that it misapplied the exigent circumstances exception.[97] The supreme court began its

91. *See* Petition for Review and Brief In Support Thereof at 2–3, People v. Ray, 981 P.2d 928 (Cal. 1999) (No. S071999).

92. *See* Respondent's Brief On the Merits at 10–14, People v. Ray, 981 P.2d 928 (Cal. 1999) (No. S071999).

93. *See id.*

94. *Ray*, 981 P.2d at 932–33.

95. *Id.* at 932.

96. *See id.* at 931.

97. *See id.* at 933.

analysis with a discussion of the emergency aid exception.[98] The majority stated that under this exception "police officers 'may enter a dwelling without a warrant to render emergency aid and assistance to a person whom they reasonably believe to be in distress and in need of that assistance.'"[99] Unlike the Attorney General, however, the majority concluded that the emergency aid doctrine is a subcategory of the community caretaking exception, not the exigent circumstances exception.[100]

The court distinguished between the exigent circumstances exception and the community caretaking exception, stating that:

> When the police act pursuant to the exigent circumstances exception, they are searching for evidence or perpetrators of a crime. Accordingly, in addition to showing the existence of an emergency leaving no time for a warrant, they must also possess probable cause that the premises to be searched contains such evidence or suspects. In contrast, the community caretaker exception is only invoked when the police are not engaged in crime-solving activities.[101]

The court determined that the exigent circumstances exception did not apply in this instance because the officers were not engaged in crime-solving activities.[102] Further, the emergency aid exception was also inapplicable because such an exception requires a showing of "specific, articulable facts indicating the need for 'swift action to prevent imminent danger to life or serious damage to property.'"[103] Instead, the court determined that under the community caretaking exception, "circumstances short of a perceived emergency may justify a warrantless entry."[104]

The court stated that "under these facts [sic] the officers acted reasonably to protect the safety and security of persons and property when they briefly entered the defendant's residence without a warrant and then observed contraband in plain view."[105] The court established a rule that when officers make a warrantless entry into a dwelling based on the community caretaking exception, they are authorized to use their observations of any incriminating evidence that is in plain view while they are inside the dwelling to form the basis of a subse-

98. *See id.* at 932–33.
99. *Id.* at 933 (quoting Root v. Gauper, 438 F.2d 361, 364–65 (8th Cir. 1971)).
100. *See id.*
101. *Id.* (quoting People v. Davis, 497 N.W.2d 910, 920 (Mich. 1993)).
102. *See id.*
103. *Id.* at 934 (quoting People v. Duncan, 720 P.2d 2, 5 (Cal. 1986)).
104. *Id.*
105. *Id.* at 939.

quent search warrant.[106] Moreover, that evidence is then admissible in a court of law to prosecute the offender.[107]

The court relied on *People v. Roberts*[108] to support its opinion. In *Roberts*, officers went to an apartment believed to be occupied by the defendant, a suspect in a burglary.[109] They knocked on the defendant's door, but received no response.[110] The officers claimed that because they heard "moans or groans" coming from the interior of the residence, they believed that an occupant might be in distress and therefore decided to enter without first obtaining a warrant.[111] The officers did not find anyone inside the residence, but did find property that was taken in the burglary.[112] The evidence discovered was used to prosecute the defendant for burglary.[113] The *Roberts* court upheld the warrantless search, stating that "the officers reasonably believed that someone inside the apartment was in distress and in need of assistance and that they entered for the purpose of giving aid."[114] The *Ray* court reasoned that *Roberts* supported the actions of the officers in *Ray* because, like the officers in *Roberts*, the officers in *Ray* entered the premises believing that someone inside might be in distress.[115]

According to the *Ray* court, under the community caretaking exception, "[l]ocal police 'should and do regularly respond to requests of friends and relatives and others for assistance when people are concerned about the health, safety or welfare of their friend, loved ones and others.'"[116] The court found *State v. Alexander*[117] "particularly instructive" on this point.[118] In *Alexander*, an anonymous caller reported that his next door neighbor's basement door was open and he believed that his neighbor was away.[119] The officers knocked and announced their presence, but received no response.[120] The officers then proceeded to enter the residence believing a burglary might be

106. *See id.*
107. *See id.*
108. 303 P.2d 721 (Cal. 1956).
109. *See id.* at 722.
110. *See id.*
111. *See id.*
112. *See id.*
113. *See id.*
114. *Id.*
115. *See* People v. Ray, 981 P.2d 928, 935 (Cal. 1999).
116. *Id.* at 934 (quoting State v. Bridewell, 759 P.2d 1054, 1060 n.1 (Or. 1988)).
117. 721 A.2d 275 (Md. 1998).
118. *Ray*, 981 P.2d at 936.
119. *See Alexander*, 721 A.2d at 277.
120. *See id.* at 278.

in progress.[121] The Maryland Supreme Court upheld the warrantless search on the basis of the community caretaking exception, concluding that "the police were not pursuing the [defendants] but were attempting to come to their possible aid."[122] The majority in *Ray* relied on *Alexander* to justify the officers' actions under the community caretaking exception, holding that, like the officers in *Alexander*, the officers were not engaged in any crime-solving activities when they entered the defendant's home without a warrant.[123]

In *Alexander*, the court held that the standard for assessing whether an officer's actions are justified by the community caretaking exception is one of reasonableness.[124] The California Supreme Court concluded that the officers in *Ray* met this standard.[125] According to the court, because the officers reasonably believed that the defendant's house might have been burglarized due to its appearance, and did not enter to criminally investigate the defendant, the officers were permitted to enter the dwelling to determine whether there was anyone inside in need of assistance or property in need of protection.[126]

b. The Concurring Opinion

The concurring opinion did not discuss the community caretaking exception in its analysis.[127] Instead, Chief Justice George found the search constitutional on the same ground as the court of appeal.[128] He argued that the officers' entry into the defendant's home was justified by the exigent circumstances exception, since "the officers had reasonable cause to believe a burglary was in progress, or that a burglary had been committed and there might be persons inside the residence in need of assistance."[129]

c. The Dissenting Opinion

The *Ray* opinion included a strong dissent from Justice Mosk, who adamantly disagreed with the majority's endorsement of the community caretaking exception.[130] Justice Mosk stated that "[s]uch an

121. *See id.*
122. *Id.* at 277.
123. *See Ray*, 981 P.2d at 937.
124. *See Alexander*, 721 A.2d at 277.
125. *See Ray*, 981 P.2d at 938.
126. *See id.*
127. *See id.* at 940 (George, C.J., concurring).
128. *See id.* (George, C.J., concurring).
129. *Id.* (George, C.J., concurring).
130. *See id.* at 940–44 (Mosk, J., dissenting).

exception threatens to swallow the rule that absent a showing of true necessity, the constitutionally guaranteed right to security and privacy in one's home must prevail."[131] After discussing the history of the Fourth Amendment and the protections traditionally afforded the American public,[132] he emphasized that this type of situation is exactly what the Fourth Amendment was intended to protect against.[133] His opinion also warned against the potential dangers lurking behind the community caretaking exception, such as decreased protections guaranteed by the Fourth Amendment and an increased likelihood for potential abuse by law enforcement agents.[134]

III. Analysis: *Ray*—Opening the Door to Police Intrusion

A. *Ray* Conflicts with Previous Fourth Amendment Jurisprudence

The *Ray* decision does not comport with previous Fourth Amendment jurisprudence, which has limited the application of the community caretaking exception to warrantless searches of automobiles, not private residences.[135] The California Supreme Court should have followed precedent and refused to justify the warrantless search of a home based on the community caretaking exception.[136]

As the Seventh and Ninth Circuits previously recognized, the community caretaking exception was meant to apply only to warrantless searches of automobiles, in part because automobiles are given less protection against unreasonable searches under the Fourth Amendment.[137] In fact, the court in *Pichany* made it a point to note that the community caretaking exception created by the United States Supreme Court in *Cady* was not meant to be a broad exception "whenever the police are acting in an 'investigative,' rather than 'criminal' function."[138] In so ruling, the Seventh Circuit refused to recognize that the community caretaking exception applied to a warrantless search of an individual's home.[139] So too did the Ninth Circuit in *Erickson* reject the expansion of the exception beyond its limited applica-

131. *Id.* at 941 (Mosk, J., dissenting).
132. *See id.* at 940–44 (Mosk, J., dissenting).
133. *See id.* at 941–42 (Mosk, J., dissenting).
134. *See id.* at 944 (Mosk, J., dissenting).
135. *See* Cady v. Dombrowski, 413 U.S. 433, 442 (1973); United States v. Erickson, 991 F.2d 529, 532 (9th Cir. 1993); United States v. Pichany, 687 F.2d 204, 209 (7th Cir. 1982).
136. *See Pichany*, 687 F.2d at 209; *Erickson*, 991 F.2d at 532.
137. *See Pichany*, 687 F.2d at 209; *Erickson*, 991 F.2d at 532.
138. *Pichany*, 687 F.2d at 208–09.
139. *See id.* at 209.

tion to automobiles.[140] Echoing the high Fourth Amendment protections courts have traditionally afforded homes,[141] the *Erickson* court noted that there is a "'constitutional difference' between searching a house and searching an automobile."[142] Thus, the community caretaking exception should not apply to a warrantless search of a home.[143]

The California Supreme Court in *Ray* missed the crucial distinction between the home and automobile in terms of the constitutional protections against warrantless searches.[144] The mere fact that police are investigating a possible burglary or threat to public safety is not enough to justify the erosion of the constitutional protections of the home.[145] Simply put, the California Supreme Court should have found that the sanctity of the home cannot be violated by a warrantless search short of exigent circumstances, limiting the community caretaking exception to warrantless searches of automobiles.

B. *Ray* Creates a Potential for Abuse

The *Ray* decision could have a drastic effect on future Fourth Amendment jurisprudence by increasing the number of warrantless searches of homes upheld under the community caretaking exception in California and possibly elsewhere.

As the dissenting opinion in *Ray* stated, "[t]he potential for abuse is obvious."[146] *Ray* has lowered the threshold for allowing law enforcement officials to conduct warrantless searches of homes whenever faced with a situation where a crime might have been committed. The community caretaking exception gives police an exorbitant amount of discretion to conduct warrantless searches of peoples' homes.

For example, in *Ray*, the neighbor who reported that the defendant's door had been open all day, also said that he did not think anyone was home, and that he could be contacted if necessary.[147] However, the officers did not attempt to further contact the neighbor, nor did they attempt to contact any of the defendant's other neighbors.[148] In addition, the officers failed to conduct a perimeter search

140. *See Erickson*, 991 F.2d at 532.
141. *See* Payton v. New York, 445 U.S. 573, 585 (1980).
142. *Erickson*, 991 F.2d at 532 (quoting Cady v. Dombrowski, 413 U.S. 433, 442 (1973)).
143. *See id.*
144. *See, e.g., id.*
145. *See* United States v. Pichany, 687 F.2d 204, 208–09 (7th Cir. 1982).
146. People v. Ray, 981 P.2d 928, 944 (Cal. 1999) (Mosk, J., dissenting).
147. *See id.* at 931.
148. *See id.*

of his home in order to discern whether there was any additional evidence to indicate that a burglary had indeed taken place.[149] Instead, the officers entered the residence based only on the neighbor's telephone call and the appearance of defendant's living room.[150] Even assuming that a burglary had taken place, the probability that a crime was still in progress was greatly diminished by the fact that the door had been open *all day long*.[151]

The police officers substituted probable cause with their own discretion and subverted the purpose behind the Fourth Amendment warrant requirement.[152] They based their decision to enter Ray's home on what amounted to a hunch. They entered because the defendant's door was open and the front room was "a mess."[153] However, as indicated by the record, the trial court's reliance on the room's "messy" appearance might have been misplaced. Although one of the officers testified that the room appeared to be messy, "his two contemporaneous reports . . . did not include any such observation. A second officer testified that he did not notice a mess before entering. The trial court implicitly found that the officers did *not* observe the condition of the house as they stood outside the door."[154] The California Supreme Court should have deferred to the trial court's findings and given less credence to the officers' testimony.

Under the community caretaking exception, the police are authorized to enter homes only to protect the occupant's safety and welfare.[155] However, police have the power to abuse the community caretaking exception by acting under the guise of concern for an individual's welfare, when, in reality, their true motivation may be to seek and find incriminating evidence with which to prosecute that individual. Ironically, police involvement based on the community caretaking exception may indirectly lead to the prosecution of the very people the police were initially seeking to protect.

C. Flaws in *Ray*

The majority opinion focused its analysis primarily on two previous decisions—*Roberts* and *Alexander*. The majority used the facts of

149. *See id.*
150. *See id.*
151. *See id.*
152. *See id.*
153. *Id.*
154. *Id.* at 941 n.1 (Mosk., J., dissenting).
155. *See id.* at 934.

both cases and the application of the community caretaking exception in those instances to justify the application of the exception to the facts of *Ray*.[156] However, the *Roberts* and *Alexander* opinions illustrate the inherent problems that can arise when applying the community caretaking exception in the context of warrantless entries into private residences.

The facts of *Roberts* illustrate the likelihood for abuse of discretion by police officers when performing warrantless searches based on the community caretaking exception. In *Roberts*, the officers claimed that because they heard "moans and groans" emanating from the defendant's home, they were therefore justified in making a warrantless entry.[157] However, upon entry they discovered that no one was in fact inside the residence.[158] The court nevertheless justified the officers' actions under the community caretaking exception, allowing the defendant to be prosecuted for evidence seized pursuant to the initial warrantless entry.[159]

The problem with applying the exception to the circumstances like those described in *Roberts* is that it gives police officers the ability to enter a private residence without a warrant simply by claiming that they heard "moans or groans" coming from the interior of the residence. The potential for abuse under such circumstances is abundant, as officers investigating possible crimes will be tempted to enter a residence without a warrant, and to later justify their actions solely by claiming that they heard noises coming from inside the residence. The Fourth Amendment's warrant requirement is intended to curb the potential for abuses of discretion by police officers, and the community caretaking exception will likely defeat this critical purpose when applied in the context of a private residence.

The *Alexander* court set the standard of review for application of the community caretaking exception as one of reasonableness.[160] In *Alexander*, as in *Ray*, the defendant's door was open and the officers did not receive a response from the interior of the residence.[161] Based on such facts, the officers in both cases decided to make warrantless entries into the defendants' homes.[162] In both cases, the courts viewed the officers' actions as reasonable, and therefore justified by the com-

156. *See id.* at 935–37.
157. *See* People v. Roberts, 303 P.2d 721, 722 (Cal. 1956).
158. *See id.*
159. *See id.*
160. *See* State v. Alexander, 721 A.2d 275, 277 n.124 (Md. 1998).
161. *See id.* at 277–78.
162. *See Roberts*, 303 P.2d at 722; *Alexander*, 721 A.2d at 275.

munity caretaking exception.[163] However, the reasonableness standard sets too low a threshold for application of the community caretaking exception.

The court in *Alexander* suggested that "because the police were not looking for any evidence of a crime, they needed no suspicion at all to 'search.'"[164] This standard permits officers to enter a private residence whenever a door is left open and the officers receive no response from inside the residence. The privacy that individuals once enjoyed in their own homes will be defeated by a standard that permits officers to make warrantless entries based on such a paucity of facts. Such an innocuous observation should not give officers the right to make a warrantless entry and subsequently prosecute the owner for evidence found inside the residence. If officers are permitted to make such entries, the purpose of the Fourth Amendment, and the protection that it affords, will be severely diminished.

D. Artificial Devices and Artificial Concern

In *Silverman v. United States*,[165] the United States Supreme Court reviewed a decision admitting into evidence contents of conversations that took place in the defendant's home, which were overheard by police officers by means of an electronic listening device.[166] The Court emphasized the protection the Fourth Amendment provides individuals while in their homes.[167] The majority opinion, written by Justice Stewart, stated: "This Court has never held that a federal officer may without warrant and without consent physically entrench into a man's office or home, there secretly observe or listen, and relate at the man's subsequent criminal trial what was seen or heard."[168]

While the particular facts of *Silverman* and *Ray* are dissimilar, the underlying circumstance involved in both cases is the same—an unreasonable intrusion by law enforcement into an individual's private residence. While *Silverman* prevents the police from using listening devices to ferret out criminal activity,[169] the same principle should also prevent the police from snooping around an individual's home (where they may already suspect criminal activity) or waiting for a

163. *See Roberts*, 303 P.2d at 722; *Alexander*, 721 A.2d at 280.
164. People v. Ray, 981 P.2d 928, 937 (Cal. 1999) (citing *Alexander*, 721 A.2d at 277–80).
165. 365 U.S. 505 (1960).
166. *See id.* at 506.
167. *See id.* at 511.
168. *Id.* at 511–12.
169. *See id.*

door to be left open in order to justify their immediate entry into the residence without a warrant.

The private domain is afforded expansive protection which is not to be invaded by artificial listening devices; neither should it be invaded by a police officer's artificial concern for a dwelling's inhabitant. Individuals should not have to worry that leaving their doors open and their living rooms "messy" will grant a police officer the right to enter their homes and conduct a random inspection. This unbridled discretion will not only diminish the level of privacy individuals once enjoyed in their homes, but ironically, it will also foster community distrust of law enforcement officials empowered under the very community caretaking exception meant to protect them.

E. Warrantless Limbo: How Low Can You Go?

The *Ray* majority should not have validated the police conduct in this instance under either the community caretaking or the exigent circumstances exception. At the very least, the court should have constrained its analysis to the exigent circumstances exception given previous Fourth Amendment jurisprudence and the particular facts of the case. The exigent circumstances exception was clearly defined in the case of *People v. Dumas*,[170] where the California Supreme Court stated:

> The courts have implicitly recognized that man requires some sanctuary in which his freedom to escape the intrusions of society is all but absolute. Such places have been held inviolate from warrantless search except in emergencies of overriding magnitude, such as pursuit of a fleeing felon or the necessity of action for the preservation of life or property.[171]

In *Ray*, the facts available to the officers at the time they entered the defendant's dwelling did not warrant a belief that an "emergency of overriding magnitude" was at hand. The officers knew that the door had been open all day long, but did not even attempt to contact the person who reported the incident. For all the police officers knew, the anonymous caller could have been a disgruntled neighbor who just wanted to harass his neighbor. There was no indication that someone inside needed help or that a crime was in progress.[172] Instead, the police entered the home without any readily apparent emergency and

170. 512 P.2d 1208 (Cal. 1973).

171. *Id.* at 1215–16 (citing Warden v. Hayden, 387 U.S. 294 (1967); People v. Sirhan, 497 P.2d 1121, 1137–42 (Cal. 1972); People v. Roberts, 303 P.2d 721, 723 (Cal. 1956)).

172. *See* People v. Ray, 981 P.2d 928, 941 (Cal. 1999) (Mosk, J., dissenting) ("There was no evidence of a forced entry; an expensive-looking television and stereo situated near the

discovered contraband that was subsequently used to prosecute the defendant.

The community caretaking exception sets no boundaries.

> [It] has obscured the firm line at the entrance to the house that the Fourth Amendment has drawn. Does the lead opinion's new exception also permit entry when a door is unlocked? When a neighbor reports that no one is home, or the occupants simply choose not to answer a knock at the door? When something "might be" wrong?[173]

It now appears permissible under the community caretaking exception for officers to make a warrantless entry into a private residence even if the front door is closed and perhaps either a window or garage door is open. If an officer were to come upon an open window or garage, would he or she be justified in taking a look inside? In making a warrantless entry? The protection historically afforded private residences is greatly decreased by an exception which permits such unbridled discretion on the part of police officers. Consequently, the home will no longer be viewed as a sanctuary where an individual can be free from governmental intrusions.

The exigent circumstances and emergency aid exceptions already provide officers with the ability to make warrantless entries into private residences when the circumstances permit such entries. Officers should not be allowed to use the newly adopted community caretaking exception to justify the remainder of warrantless entries that are not permitted under either of these exceptions. Officers should be limited to those exceptions already carefully delineated for warrantless entries into private residences, keeping the protection afforded by the Fourth Amendment intact.

F. *Tamborino v. Superior Court* and *Ray*: A Case of Apples and Oranges

In *Tamborino v. Superior Court*,[174] the California Supreme Court reviewed a decision permitting the introduction of evidence that was seized after an initial warrantless entry by police officers into a private residence.[175] The search and seizure were justified on the basis of an abundance of facts amounting to exigent circumstances.[176] The police

front door did not appear to have been disturbed. Nor was there any indication that anyone was inside . . . .").

173. *Id.* at 944 (Mosk, J., dissenting) (citations omitted).

174. 719 P.2d 242 (Cal. 1986).

175. *See id.* at 243.

176. *See id.*

had received a report of a robbery at a location where a victim was believed to be injured or bleeding, and they observed bloodstains outside the building and on the walkway to the defendant's apartment.[177] The officers then knocked on the defendant's door and identified themselves, but they did not receive a response.[178] The officers entered only after hearing movement from inside the apartment.[179] Once the door was open, they saw the defendant bleeding inside and, not knowing if there were any other victims inside the home, performed a protective sweep.[180] During the protective sweep, the officers discovered contraband inside the apartment.[181] The defendant sought to have the contraband suppressed.[182]

The California Supreme Court held that the exigency of the circumstances justified the officers' warrantless entry into the apartment, stating: "Under the particular facts of the present case, we conclude that the discovery of one wounded victim afforded reasonable cause to enter and briefly search for additional victims."[183] The totality of the circumstances, indicating that a violent crime may have occurred on the premises, vindicated the officers in making a warrantless entry and seizing contraband that was in plain sight.[184]

In *Tamborino*, there was abundance of clear and articulable facts justifying the officers' actions. In contrast, the facts of *Ray* were grossly insufficient and did not offer such a clear indication of an emergency situation where immediate warrantless entry into a residence was necessary. Again, in *Ray*, the officers' decision to enter the residence was based solely on the neighbor's phone call, an open door, and *possibly* a messy living room.[185] The officers did not see or hear any signs of distress coming from the interior of the residence. There was no sign of any occupants and there was nothing to indicate a crime had taken place, or that someone was injured or in need of emergency assis-

177. *See id.*

178. *See id.*

179. *See id.*

180. *See id.* at 243–44. A protective sweep allows the police to do a limited search of the premises if there is a reasonable likelihood that other victims may be found in the home. *See id.*

181. *See id.* at 244.

182. *See id.*

183. *Id.* at 245.

184. *See id.* at 245–46.

185. *See* People v. Ray, 981 P.2d 928, 941 n.1 (Cal. 1999) (Mosk, J., dissenting) (noting that "[t]he superior court implicitly found that the officers did *not* observe the condition of the house as they stood outside the door").

tance.[186] Based on such facts, the officers were not justified in entering the residence under the exigent circumstances exception.

G. Look Before You Leap: The Consequences of *Ray*

Because the *Ray* majority could not justify the officers' actions under the exigent circumstances exception to the warrant requirement, they were compelled to adopt a broad new exception.[187] However, in the court's hasty desire to admit the evidence against the defendant, its willingness to accept the community caretaking exception as the basis for its decision undercuts Fourth Amendment jurisprudence protecting individuals from unreasonable governmental intrusions and ensuring that police do not exert unbridled discretion. Indeed, neither the defendant nor the Attorney General in *Ray* briefed or argued before the California Supreme Court about the applicability of the community caretaking exception.[188]

The *Ray* decision is likely to have a drastic effect on the delicate balance struck by the many decisions weighing law enforcement's right to conduct effective investigations against an individual's right to be secure in his or her own home. If the California Supreme Court wanted to create a new exception to the warrant requirement, it should have included an explanation of how the exception is to function and under what circumstances law enforcement agents may be justified in using it to explain their conduct. The *Ray* opinion does not include any such examination or guidance, leaving this area of law ambiguous and open to significant interpretation. Unfortunately, application of the community caretaking exception is likely to be done by law enforcement officials on an *ad hoc* basis at the expense of the American public.

It should be noted that this Note does not suggest that officers should never be able to enter a home in order to check on the safety of the occupants and property therein. Rather, when police enter an individual's private residence without a warrant and cannot justify their actions on the basis of exigent circumstances, they should be prohibited from using any evidence that is taken from the interior of the residence in a subsequent prosecution. The officers should not be

186. *See id.* at 941 (Mosk, J., dissenting).

187. *See id.* at 932.

188. *See id.* at 932–33 (explaining that the trial court and the court of appeal analyzed the facts and law under the exigent circumstances exception to the Fourth Amendment requirement, and that only on review did the Attorney General even urge the California Supreme Court to affirm the court of appeal on the basis of the emergency aid exception).

able to use the community caretaking exception to circumvent the Fourth Amendment protection of homes; such exception should only be applied to automobiles based on their unique, transitory nature.[189]

Conclusion

The community caretaking exception applied in *Ray* runs afoul of precedent because it allows for a warrantless entry into a private home absent exigent circumstances. This exception represents a major departure from the many cases decided in light of the *Payton* decision all but prohibiting warrantless searches of private homes.[190] The *Ray* court simply chose to ignore precedent, a decision which will likely have a drastic effect on the many cases that will come before the California courts challenging warrantless entries into private homes and subsequent prosecutions for evidence discovered within.

In *Ray*, there was no imminent threat to the occupants of the household and, consequently, there was no reason for the police to enter the residence without a warrant. If the California Supreme Court is willing to authorize such actions by police, the protection afforded by the Fourth Amendment will cease to exist. As the dissenting opinion noted, "[u]nder the lead opinion's newly created exception, entry is permissible, and incriminating evidence can be seized, when police officers enter a home merely to 'find out what's going on.'"[191] Individuals can no longer feel as if their homes are safe from the watchful eye of the police who might come upon their open door and enter uninvited, merely because they suspect that an occupant needs assistance or whatever other reasonable, non-criminal justification the police can posit. The community caretaking exception adopted by the California Supreme Court in *Ray* should be reviewed by the United States Supreme Court for a final determination that such an exception defeats the central purpose of the warrant requirement and should therefore be discarded.

189. *See* Payton v. New York, 445 U.S. 573, 587–89 (1980); Cady v. Dombrowski, 413 U.S. 433, 442 (1973); United States v. Erickson, 991 F.2d 529, 532 (9th Cir. 1993); United States v. Pichany, 687 F.2d 204, 209 (7th Cir. 1982).

190. *See Payton*, 445 U.S. at 590.

191. *Ray*, 981 P.2d at 944 (Mosk, J., dissenting).